

## 48A C.J.S. Judges § 224

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VIII. Liabilities

#### B. Nature and Scope of Acts and Functions

### § 224. Generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  36

**Judicial immunity does not automatically attach to all the categories of conduct in which the judge may properly engage but only to those acts which are of a judicial or quasi-judicial nature.**

Judicial immunity does not automatically attach to all the categories of conduct in which a judge may properly engage<sup>1</sup> but only to those acts which are of a judicial<sup>2</sup> or quasi-judicial<sup>3</sup> nature. The rule includes acts committed within judicial discretion.<sup>4</sup>

For purposes of absolute judicial immunity, "judicial acts" are those that are intimately associated with the judicial functions, including the adjudication of disputes, weighing evidence, making factual findings, reaching legal determinations, choosing sanctions, and expounding reasons for decisions.<sup>5</sup> Even where a judge abuses his or her discretion, it does not follow that the judge is, ipso facto, liable to a suit for damages since the abuse of discretion is not necessarily a manifestation of such lack of good faith as would deprive the judge of immunity to suit.<sup>6</sup> The factors determining

whether an act by a judge is a judicial one relate to the nature of the act itself,<sup>7</sup> that is, whether it is a function normally performed by a judge,<sup>8</sup> and to the expectations of the parties, that is, whether they dealt with the judge in his or her judicial capacity.<sup>9</sup>

Particular acts of a judge have been held to be judicial or quasi-judicial within the immunity rule,<sup>10</sup> such as those performed in connection with commitment proceedings,<sup>11</sup> child custody cases,<sup>12</sup> disciplinary proceedings against attorneys,<sup>13</sup> extradition cases,<sup>14</sup> and probation matters.<sup>15</sup> Other acts by a judge within the immunity rule include ordering sterilization of a child,<sup>16</sup> inflicting punishment for contempt,<sup>17</sup> defamatory statements uttered in the course of performing judicial duties,<sup>18</sup> slanderous statements made from the bench,<sup>19</sup> and defamatory statements in written opinions<sup>20</sup> or affidavits.<sup>21</sup>

In addition, setting bail is a judicial act,<sup>22</sup> and a litigant cannot sue a judge for failing to empanel a jury in a case.<sup>23</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Tribal court judge enjoyed absolute judicial immunity to action alleging malicious prosecution that had been brought by business owner and business against multiple lawyers, law firms, and court personnel who were involved in Indian tribe's prior contractual fraud case filed against owner and business, since owner and business challenged judge's initial decision to not recuse, his rulings on procedural motions, his discussions about case with attorneys functioning as his law clerks, and his eventual decision to recuse which were all functions normally performed by judge and for which defendants dealt with judge in his judicial capacity. [Acres Bonusing, Inc v. Marston](#), 17 F.4th 901 (9th Cir. 2021).

## [END OF SUPPLEMENT]

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### Footnotes

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U.S.—[Gregory v. Thompson](#), 500 F.2d 59 (9th Cir. 1974).

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Neb.—*Frey v. Blanket Corp.*, 255 Neb. 100, 582 N.W.2d 336 (1998).

**Issuance of order dismissing claims**

A district judge's issuance of orders dismissing the litigant's claims were the type of function normally performed by a judge, and thus, the issuance was a "judicial act" for which the judge was immune from the litigant's claims.

U.S.—*D'Alessandro v. Robinson*, 210 F. Supp. 2d 526 (D. Del. 2002).

**Conditional grant of motion to withdraw**

A judge's actions, which included conducting a hearing on a motion to withdraw as counsel, ruling on such a motion, and requiring that certain conditions be met as a prerequisite for granting the motion, are all acts normally performed by a judge and therefore judicial in nature.

U.S.—*Schottel v. Young*, 687 F.3d 370 (8th Cir. 2012), cert. denied, 133 S. Ct. 870, 184 L. Ed. 2d 659 (2013).

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U.S.—*Kalec v. Adamowski*, 406 F.2d 536 (7th Cir. 1969).

**Mental health providers**

(1) When psychiatrists and other mental health providers are appointed by the court and render an advisory opinion regarding an individual's mental condition, they are acting as an arm of the court.

Iowa—*Muzingo v. St. Luke's Hosp.*, 518 N.W.2d 776 (Iowa 1994).

(2) A court-appointed psychologist acting as an independent custody investigator in a custody dispute was entitled to absolute quasi-judicial immunity from liability for actions taken as an investigator.

Alaska—*Lythgoe v. Guinn*, 884 P.2d 1085 (Alaska 1994).

**Guardians ad litem**

Guardians ad litem in guardianship proceedings involving court approval of settlements of the civil claims of incompetents act as an arm of the court and are therefore entitled to quasi-judicial immunity from civil liability.

Wash.—*Barr v. Day*, 124 Wash. 2d 318, 879 P.2d 912 (1994).

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U.S.—*Pierson v. Ray*, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967).

Ohio—*Evans v. Supreme Court of Ohio*, 119 Ohio Misc. 2d 34, 2002-Ohio-3518, 773 N.E.2d 621 (Ct. Cl. 2002), judgment aff'd, 2003-Ohio-959, 2003 WL 723228 (Ohio Ct. App. 10th Dist. Franklin County 2003).

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U.S.—*Goldstein v. Galvin*, 719 F.3d 16 (1st Cir. 2013).

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U.S.—*Frazer v. Hoffman*, 7 V.I. 632, 308 F. Supp. 74 (D.V.I. 1970).

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U.S.—*Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991); *Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988); *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978).

S.C.—*Faile v. South Carolina Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002).

As to ministerial or administrative acts, see § 225.

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U.S.—*Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); *Hale v. Lefkowitz*, 239 F. Supp. 2d 842 (C.D. Ill. 2003).

- 9 U.S.—*Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); *Hale v. Lefkow*, 239 F. Supp. 2d 842 (C.D. Ill. 2003).
- 10 U.S.—*Cole v. Hartford Acc. & Indem. Co.*, 379 F. Supp. 1265 (M.D. Ala. 1974).  
**Controlling conduct of party**  
Where a judge had jurisdiction over plaintiff, and he properly ordered plaintiff removed from the courtroom because of angry and loud conduct, he was immune from civil liability for such act.  
  
Wash.—*Burgess v. Towne*, 13 Wash. App. 954, 538 P.2d 559 (Div. 1 1975).  
**Liquor license application**  
Where a judge had the power to entertain and act upon a liquor license application, he was immune from liability for his denial of the application.  
  
U.S.—*Chalk v. Elliott*, 449 F. Supp. 65 (N.D. Tex. 1978).
- 11 U.S.—*Perkins v. U. S. Fidelity & Guaranty Co.*, 433 F.2d 1303 (5th Cir. 1970); *Bottos v. Beamer*, 399 F. Supp. 999 (N.D. Ind. 1973).  
**Temporary detention**  
Since a state judge was acting in the course of his duties as prescribed by the state mental health act when he signed an order for temporary detention of plaintiff for examination into her mental condition, the judge was entitled to absolute immunity with regards to plaintiff's claims against him.  
  
U.S.—*Martens v. Tremble*, 481 F. Supp. 831 (E.D. Wis. 1979).
- 12 Ill.—*Dear v. Locke*, 128 Ill. App. 2d 356, 262 N.E.2d 27 (2d Dist. 1970).
- 13 U.S.—*Niklaus v. Simmons*, 196 F. Supp. 691 (D. Neb. 1961).  
  
Minn.—*Peterson v. Knutson*, 305 Minn. 53, 233 N.W.2d 716 (1975).
- 14 U.S.—*Collins v. Moore*, 441 F.2d 550 (5th Cir. 1971).
- 15 U.S.—*Grove v. Rizzolo*, 441 F.2d 1153 (3d Cir. 1971).  
  
Or.—*Higgins v. Redding*, 34 Or. App. 1029, 580 P.2d 580 (1978).
- 16 **Lack of formality**  
Because a state circuit court judge, in approving a mother's ex parte petition to have her somewhat retarded daughter sterilized, acted in his capacity as circuit court judge, and performed the type of act normally performed only by judges, the lack of formality with which he proceeded did not render his action "nonjudicial" for purposes of depriving him of absolute immunity from damages liability.  
  
U.S.—*Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978).
- 17 U.S.—*McClain v. Brown*, 587 F.2d 389 (8th Cir. 1978).  
  
Mont.—*State ex rel. Shea v. District Court of Fourth Judicial Dist. In and For Lake County*, 156 Mont. 266, 479 P.2d 281 (1971).
- 18 U.S.—*Mee v. Becker*, 456 F. Supp. 224 (W.D. Mo. 1978).  
  
Mont.—*Hartsoe v. McNeil*, 2012 MT 221, 366 Mont. 335, 286 P.3d 1211 (2012).  
  
S.D.—*Brech v. Seacat*, 84 S.D. 264, 170 N.W.2d 348 (1969).  
  
**Scurrilous attack on counsel, parties, and witnesses**

If acting within his or her official capacity, a judge may scurrilously attack counsel, parties, and witnesses who appear before him or her and escape legal accountability.

U.S.—*O'Bryan v. Chandler*, 496 F.2d 403 (10th Cir. 1974).

**Statement in press release**

A judge retained judicial immunity from a defamation action for statements made in a press release and published in a newspaper.

U.S.—*Skolnick v. Campbell*, 398 F.2d 23 (7th Cir. 1968).

19 U.S.—*Calvert v. Safranek*, 209 Fed. Appx. 816 (10th Cir. 2006).

20 U.S.—*O'Bryan v. Chandler*, 496 F.2d 403 (10th Cir. 1974).

21 U.S.—*Harris v. Harvey*, 436 F. Supp. 143 (E.D. Wis. 1977).

22 U.S.—*Sanchez v. Doyle*, 254 F. Supp. 2d 266 (D. Conn. 2003).

23 Tex.—*B.K. v. Cox*, 116 S.W.3d 351 (Tex. App. Houston 14th Dist. 2003).

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